

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT**

**October 27, 1999**

DIVISION ONE

Court convened at 9:00 A.M.

Present: Spencer, P.J., Ortega, J., Vogel (Miriam A.), J., Masterson, J., and Connie Hon, Deputy Clerk.

Each of the following:

B130956 DCFS v. Anthony B., et al.  
B134220 Nancy V. v. S.C.L.A. (D.C.F.S., rpi)

Argument waived, cause submitted.

B129189      First Broadcast Partners  
                 v.  
                 Manley et al.

Merits:  
Argued by Boyd S. Lemon for appellants and by E. Randol Schoenberg for respondent. Cause submitted.

B128800      Kappler  
                 v.  
                 Ayvazi

Merits:  
Argued by Stephen B. Maseda for appellant and by Linda T. Barney for respondent. Cause submitted.

DIVISION ONE (Continued)

B126460     Reyes  
               v.  
               Perini

Merits:

Argued by Jack R. Ormes for appellant and by Maxine J. Lebowitz for respondent. Cause submitted.

B122587     Thomas  
               v.  
               Lane

Merits:

Argued by J. Stanley Sanders for appellant and by Rupert Byrdsong for respondent. Cause submitted.

B132026     Wallet  
               v.  
               Watson

Merits:

Argued by Lindsay Watson, appellant in propria persona, and by Andrew Wallet, respondent in propria persona. Cause submitted.

B130096     Compton Firefighters Union Local 2216 et al.  
               v.  
               Superior Court of Los Angeles County  
               (City of Compton, r.p.i.)

Merits:

Argued by Patrick J. Thistle for appellants and by Cindy S. Lee for real party in interest. Cause submitted.

DIVISION ONE (Continued)

B126125     Flynn  
              v.  
              Los Angeles Unified School District et al.

Merits:  
Argued by Richard Tanzer for appellant. Jesus Estrada-Melendez waives oral argument for respondents. Cause submitted.

B130012     Crandell  
              v.  
              Superior Court of Los Angeles County  
              (The People, r.p.i.)

Merits:  
Argued by Robert S. Gerstein for petitioner and by Natasha S. Cooper for real party in interest. Cause submitted.

B125931     Leonard  
              v.  
              Aura Systems, Inc.

Merits:  
Argued by Steven C. Rice for appellant and by K. Michele Williams for respondent. Cause submitted.

B125234     Hagen et al.  
              v.  
              Longoria et al.

Merits:  
Argued by Earl Wade Shinder for appellants and by Maureen Haight Gee for respondents. Cause submitted.

DIVISION ONE (Continued)

B122596     Yau  
              v.  
              California Board of Chiropractic Examiners

Merits:  
Argued by Richard A. Moss for appellant and by Arthur Taggart, deputy attorney general, for respondent. Cause submitted.

B117804     Lyon et al.  
              v.  
              Rand Corporation

Merits:  
Argued by Chester L. Smith for appellants and by Karen J. Kubin for respondent. Cause submitted.

Ortega, J. leaves the bench.

B127429     Cook et al.  
              v.  
              Greenberg & Bass et al.

Merits:  
Argued by Alan N. Goldberg for appellants and by Lawrence Borys for respondents. Cause submitted.

Ortega, J. resumes the bench.

B124730     Casselman  
              v.  
              County of Los Angeles et al.

Merits:  
Argued by Gary Casselman, appellant in propria persona and by Carolyn Oill for respondents. Cause submitted.

Spencer, P.J. leaves the bench.

DIVISION ONE (Continued)

B129888      Goodman et al.  
                 v.  
                 Farmers & Merchants Trusts Company, etc., et al.

Merits:  
Argued by Neil C. Newson for appellants and by Michael Leight for  
appellants. Cause submitted.

Spencer, P.J. resumes to the bench.

B126891      Chuchua  
                 v.  
                 Stone

Merits:  
Argued by Richard Vergel de Dios for appellant-respondent and by Morris  
Stone, respondent-appellant in propria persona. Cause submitted.

B126795      Los Angeles County Metropolitan Transportation Authority  
                 v.  
                 Amalgamated Transit Union et al.

Merits:  
Argued by Mary E. Reyna, deputy county counsel, for appellant and by  
William J. Flynn for respondent. Cause submitted.

B125723      Voce et al.  
                 v.  
                 City of Palos Verdes Estates  
                 (Kivuls et al., r.p.i.)

Merits:  
Argued by Richard L. Kickerbocker for appellant and by Stephanie Scher  
for respondent. Cause submitted.

## DIVISION ONE (Continued)

B127424      Micro Technology Concepts, Inc.  
v.  
Pet Computers, Inc.

Merits:

Argued by Catherine L. Rivard for appellant and by Heather Rose Atkinson for respondent. Cause submitted.

Court adjourned.

B126757 People (Not for Publication)  
v.  
Fabricant

The judgment is affirmed.

Masterson, J.

We concur: Ortega, Acting P.J.  
Vogel (Miriam A.), J.

B128943 People (Not for Publication)  
v.  
Sales

The judgment is affirmed.

Masterson, J.

We concur: Ortega, Acting P.J.  
Vogel (Miriam A.), J.

## DIVISION TWO

B120763      People                                  (Not for Publication)  
v.  
Jackson et al.

The judgment against defendant Leonard is affirmed. The judgment as to defendant Jackson is reversed with regard to the imposition of the section 667.5 enhancement on Counts 1, 2 and 3, and remanded to the trial court for further proceedings not inconsistent with this opinion. In addition, the judgment as to defendant Jackson will be modified to stay, pursuant to section 654, the execution of sentence on the burglary conviction pending the successful service of sentence on the robbery conviction, at which time the stay will become permanent. The superior court is directed to prepare an amended abstract of judgment to reflect these modifications. In all other respects the judgment against defendant Jackson is affirmed.

Zebrowski, J.

We concur:   Boren, P.J.  
                      Nott, J.

[illegible]

The sentence is reversed and the matter is remanded for further sentencing proceedings consistent with this opinion. In all other respects the judgment is affirmed.

Zebrowski, J.

We concur: Boren, P.J.  
Mallano, J. (Assigned)

DIVISION TWO (Continued)

B122939      Holloway                              (Not for Publication)  
                 v.  
                 A & B Plumbing et al.

The judgment is reversed. Plaintiff to recover costs on appeal.

Zebrowski, J.

We concur:    Boren, P.J.  
                     Nott, J.

B125166      Schmidt                              (Not for Publication)  
                 v.  
                 Hermosa Beach Yacht Club

The judgment is affirmed.

Boren, P.J.

We concur:    Nott, J.  
                     Zebrowski, J.

B129191      Chris-Craft Industries, Inc.              (Not for Publication)  
                 v.  
                 Hartford Accident and Indemnity Company

The order under review is affirmed. Chris-Craft is entitled to costs on appeal.

Boren, P.J.

We concur:    Nott, J.  
                     Mallano, J. (Assigned)



DIVISION THREE

[illegible]

The judgment is affirmed.

Aldrich, J.

We concur: Klein, P.J.  
Croskey, J.

B123036 People (Not for Publication)  
v.  
Long

The judgment is modified to impose a suspended parole revocation fine in the amount of \$1,000. (Pen. Code 1202.45.) In all other respects, the judgment is affirmed.

Aldrich, J.

We concur: Klein, P.J.  
Croskey, J.

B108348      Jamie Scott Enyart  
v.  
City of Los Angeles and Thomas J. Miller

Filed order vacating submission order of July 13, 1999. for the reason that the court has granted respondent permission to file a supplemental letter briefs as of this date. Any responsive papers shall be filed no later than November 8, 1999.

The matter will be deemed resubmitted on that date.

DIVISION THREE (Continued)

B129909      Certain Underwriters at Lloyd's London, et al.  
                 v.  
                 Superior Court, Los Angeles County  
                 (Powerine Oil Company, et al., r.p.i.)

Filed order modifying opinion. (No change in the judgment)

B126124      Revere Financial Corporation                      (Not for Publication)  
                 v.  
                 Burton R. Gombiner et al.

The judgment is reversed. The matter is remanded to the trial court for a new trial on all issues. Costs on appeal are awarded to appellants Revere Financial Corporation and Southern Pacific Thrift & Loan Association.

Aldrich, J.

We concur:    Croskey, Acting P.J.  
                 Schneider, J. (Assigned)

B127607      Doris J.B. Smith                                      (Not for Publication)  
                 v.  
                 Beverly Hills Savings and Loan Association, etc., et al.

The judgment is affirmed. Costs on appeal awarded to defendant.

Kitching, J.

We concur:    Croskey, Acting P.J.  
                 Aldrich, J.

DIVISION THREE (Continued)

B119736      Susan Y. Chen      (Not for Publication)  
                 v.  
                 Jing Zhao

The judgment is affirmed.

Kitching, J.

We concur:    Croskey, Acting P.J.  
                 Aldrich, J.

B121685      Joseph Spiegelman      (Not for Publication)  
                 v.  
                 Los Angeles Unified School District

The judgment is affirmed. Costs on appeal awarded to respondent Los Angeles Unified School District.

Kitching, J.

We concur:    Croskey, Acting P.J.  
                 Schneider, J. (Assigned)

B124665      Rose Markowitz et al.      (Not for Publication)  
                 v.  
                 Jerry Kracow, dba Jerry's Bail Bonds

The order granting Code of Civil Procedure section 473 relief is affirmed.  
The Markowitz parties are awarded costs on appeal.

Kitching, Acting P.J.

We concur:    Aldrich, J.  
                 Schneider, J. (Assigned)

DIVISION THREE (Continued)

B123398      Sherman Rourman      (Not for Publication)  
v.  
State of California Board of Equalization

The judgment is affirmed. Each side to bear its own costs.

Kitching, J.

We concur:    Croskey, Acting P.J.  
                 Aldrich, J.

B134101      Lusina C. and Fermin B.      (Not for Publication)  
v.  
Superior Court, Los Angeles County  
(Los Angeles County Department of Children and Family Services, r.p.i.)

The petitions are denied.

Kitching, J.

We concur:    Croskey, Acting P.J.  
                 Aldrich, J.

DIVISION FOUR

B115618      Barnes      (Not for Publication)  
v.  
Litton Industries, Inc.

The judgment (order of dismissal) is affirmed. Respondent is awarded its costs on appeal.

Hastings, J.

We concur:    Vogel (C.S.), P.J.  
                 Epstein, J.

## DIVISION FOUR (Continued)

B126357 Higgs (Not for Publication)  
v.  
McQuarn et al.

We conclude that the court properly ruled that plaintiff failed to establish the essential elements of the causes of action for breach of contract, interference with prospective economic advantage, breach of fiduciary duty, negligent infliction of emotional distress and intentional infliction of emotional distress. Summary judgment was improperly granted, however, since there was a triable issue of material fact as to the cause of action for defamation. Therefore we reverse the order with directions to enter summary adjudication in favor of defendants as to all cause of action except defamation and to reinstate the complaint with the one cause of action remaining. The parties shall bear their own costs on appeal.

Hastings, J.

We concur: Epstein, Acting P.J.  
Curry, J.

B129635 Weiss, Ph.D. (Not for Publication)  
v.  
Board of Psychology

The judgment is affirmed.

Epstein, J.

We concur: Vogel (C.S.), P.J.  
Hastings, J.

## DIVISION FOUR (Continued)

B115618 Barnes (Not for Publication)  
v.  
Litton Industries, Inc.

The judgment (order of dismissal) is affirmed. Respondent is awarded its costs on appeal.

Hastings, J.

We concur: Vogel (C.S.), P.J.  
Epstein, J.

B126357 Higgs (Not for Publication)  
v.  
McQuarn, et al.

We conclude that the court properly ruled that plaintiff failed to establish the essential elements of the causes of action for breach of contract, interference with prospective economic advantage, breach of fiduciary duty, negligent infliction of emotional distress and intentional infliction of emotional distress. Summary judgment was improperly granted, however, since there was a triable issue of material fact as to the cause of action for defamation. Therefore we reverse the order with directions to enter summary adjudication in favor of defendants as to all causes of action except defamation and to reinstate the complaint with the one cause of action remaining. The parties shall bear their own costs on appeal.

Hastings, Acting P.J.

We concur: Epstein, J.  
Curry, J.

## DIVISION FOUR (Continued)

B126556 People (Not for Publication)  
v.  
Kentry W.

The order is affirmed.

Hastings, J.

We concur: Vogel (C.S.), P.J.  
Epstein, J.

DIVISION FIVE

B129030      People                                  (Not for Publication)  
v.  
Ernest Kincade

The clerk of the superior court is ordered to correct the abstract of judgment to reflect the imposition and suspension of a \$200 restitution fine pursuant to Penal Code Section 1202.45 and to transmit the correct abstract to the Department of Corrections. As corrected, the judgment is affirmed.

Grignon, Acting P.J.

We concur:    Armstrong, J.  
                          Godoy Perez, J.

B129584      People                                  (Not for Publication)  
v.  
Darryl Carpenter

The judgment is affirmed.

Godoy Perez, J.

We concur:   Turner, P.J.  
                      Grignon, J.

DIVISION FIVE (Continued)

106462-99

**The HONORABLE VINCENT J. O'NEILL, JR.**, Judge of the Los Angeles Superior Court, Ventura County, is hereby assigned to assist the Court of Appeal, Second Appellate District, **Division Five**, as a Justice thereof, on the following dates:

**November 1, 1999 To January 31, 2000**

and until completion and disposition of all causes and matters submitted pursuant to this assignment including, if necessary by reason of a vacancy or disqualification of a Court of Appeal justice, all petitions for rehearing arising out of such causes and matters.

This assignment does not extend to any matter in which the panel would be composed of two justices pro tempore.

Dated: October 25, 1999

Ronald M. George  
Chief Justice of California and  
Chairperson of the Judicial Council

DIVISION SIX

Court convened at 1:30 P.M. at the Santa Barbara County Board of Supervisors Hearing Room.

Present: Gilbert, Acting P.J., Yegan, J., Coffee, J., and G. Bents, Deputy Clerk.

Each of the following:

B130479 Child Protective Services v. Laura K.

Argument waived, cause submitted.



DIVISION SIX (Continued)

B126108      Cancer Foundation of Santa Barbara  
                 v.  
                 Rimkus

Merits:  
Argued by Douglas B. Large for appellants and by Timothy E. Metzinger  
for respondent. Cause submitted.

B120181      Barnes  
                 v.  
                 Ungerer

Merits:  
Argued by Marjorie G. Fuller for appellant and by Barbara S. Kilroy for  
respondents. Cause submitted.

B124671      Mirzai  
                 v.  
                 Good

Merits:  
Argued by Melbourne B. Weddle for appellant and by Michael Good for  
respondents. Cause submitted.

B129358      Point Mugu Federal Credit Union  
                 v.  
                 Cornish

Merits:  
Argued by Jeffrey D. Jennings for appellant and by Greg W. Jones for  
respondents. Appellant shall serve and file a supplemental letter brief  
within 15 days. The matter shall stand submitted in 15 days.

## DIVISION SIX (Continued)

B127721      Knoell  
v.  
Petrovich

Merits:

Argued by Michael R. Jencks for appellant and by Jeffery H. Speich for respondent. Cause submitted.

B123201      Baker  
v.  
Veco Drilling, Inc.

Merits:

Argued by Bruce N. Anticouni for appellants and by Douglas B. Large for respondent and by William B. Hirsch for amicus curiae Lieff, Cabraser, Heimann & Bernstein. Cause submitted.

B123714      Russell  
v.  
Allstate Ins. Co.

Merits:

Argued by George Ghuang for appellant and cross-respondent, and by Andrew K. Whitman for respondent and cross-appellant. Cause submitted.

Court adjourned at 5:00 P.M.

B129936      Badoud      (Not for Publication)  
v.  
Superior Electronics Group, Inc.

The judgment is affirmed. Costs to respondent.

Coffee, J.

We concur:    Gilbert, Acting P.J.  
                       Matz, J. (Assigned)

October 27, 1999-Continued

## DIVISION SIX (Continued)

B126065 People (Not for Publication)  
v.  
Duarte

The judgment is affirmed.

Gilbert, Acting P.J.

We concur: Yegan, J.  
Coffee, J.

B126969 People (Not for Publication)  
v.  
Williams

We order the clerk of the superior court to amend the abstract of judgment to reflect the imposition of a state penalty assessment of \$50, a county penalty assessment of \$35, a laboratory analysis fee of \$50 and the imposition and suspension of a parole revocation fine of \$200. The judgment is affirmed as modified.

Coffee, J.

We concur:    Gilbert, Acting P.J.  
                       Matz, J. (Assigned)

## DIVISION SEVEN

B130088      Alejo      (Certified for Publication)  
v.  
City of Alhambra

The judgment is reversed and the cause remanded for further proceedings consistent with this opinion. Appellant is awarded costs on appeal.

Johnson, J.

We concur: Lillie, P.J.  
Woods, J.

October 27, 1999-Continued

DIVISION SEVEN (Continued)

B119104 Kim (Not for Publication)  
v.  
Ha

The judgment is affirmed. Respondents to recover their costs on appeal.

Lillie, P.J.

We concur: Woods, J.  
Neal, J.

B115770      Memorial Health Services      (Not for Publication)  
v.  
Pain Relief Network

The order is affirmed. Respondent is entitled to costs on appeal.

Lillie, P.J.

We concur:   Johnson, J.  
                      Neal, J.

B127078 Carson Harbor Village (Not for Publication)  
v.  
City of Carson Mobilehome Park Rental Review

The judgment is affirmed. Respondents are entitled to costs on appeal.

Lillie, P.J.

We concur:   Johnson, J.  
                      Neal, J.

October 27, 1999-Continued

DIVISION SEVEN (Continued)

B123509      Ward      (Certified for Partial Publication)  
v.  
Technicolor, Inc.

The judgment is affirmed. Respondent is entitled to costs on appeal.

Lillie, P.J.

We concur:   Johnson, J.  
                      Woods, J.

B125676      Conservatorship and      (Not for Publication)  
Estate of Marion Adams  
Butler  
v.  
Johnson

The order is affirmed.

Lillie, P.J.

We concur:   Johnson, J.  
                      Woods, J.

B124251      Dernouni      (Not for Publication)  
v.  
O'Hana

The orders are affirmed. Respondent to receive costs on appeal.

Lillie, P.J.

We concur: Woods, J.  
Neal, J.

October 27, 1999-Continued

## DIVISION SEVEN (Continued)

B131596	Los Angeles Christian Presbyterian Church	(Not for Publication)
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## V. Christian Presbyterian Church in America

The order is affirmed.

Lillie, P.J.

We concur:   Johnson, J.  
                      Woods, J.